IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9409 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UDESING ALIAS BHAGAT BECHARAJITHAKORE

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on June 28, 1999 in exercise of powers under section 3 (1) of the Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner. The petitioner challenges that order of detention before this Court under Article 226 of

the Constitution of India.

#. The grounds of detention indicate that the detaining authority took into consideration two prohibition cases registered against the petitioner with Prohibition Station, East Zone, Ahmedabad. The detaining authority also took into consideration the statements two anonymous witnesses in respect of two incidents occurred on May 30, 1999 and June 1, 1999 and came to conclusion that the petitioner is bootlegger. That his activities are detrimental to public order. That fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner in the petition has raised many grounds. However, leaned counsel Mr. Patel, appearing for the petitioner has placed reliance on the grounds stated in para 7, which runs as under.

> "The petitioner submits that the last offence registered on 23.6.1999, arrested on 24.6.1999 and statements of witnesses are record on 26.6.1999, and 27.6.1999 and verified on 28.6.1999, and order passed on 28.6.1999. Therefore, it is non application of mind by the detaining authority."

#. Mr. Patel submitted that the verification and the detention order are of the same date, and the detaining authority therefore had no time to apply mind to the facts of the case and exercised the power under section 9 (2) of the PASA Act. He has placed reliance on the decision in the case of Kalidas Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, in support of his arguments, and urged that the petition may be allowed.

#. Mr. Dave, learned AGP has opposed this petition. He submitted that the authority has acted quickly and this quickness may not be considered as non application of mind.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining

authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 28th June, 1999 passed against the detenu-Udesinh alias Bhagat Becharji Thakor is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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